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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

DAVID N.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F071379

(Super. Ct. No. 12CEJ300282)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for extraordinary writ review. Kimberly J. Nystrom-Geist, Judge.

David N., in propria persona for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and David F. Rodriguez, Deputy County Counsel, for Real Party in Interest.

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* Before Gomes, Acting P.J., Detjen, J. and Franson, J.

David N. (father) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) following a juvenile court order setting a permanency planning hearing under Welfare and Institutions Code section 366.26 for his four-year-old son Shawn and one-year-old son David.¹ When David was seven months old, he suffered serious physical harm inflicted nonaccidentally by his mother while she was coming down from a methamphetamine high. Father, who had his own substance abuse problem, knew or should have known the mother had a substance abuse problem and yet allowed her to continue to care for David. Shawn was also at risk of suffering serious physical harm or neglect as a result.

The juvenile court exercised its dependency jurisdiction over both children on multiple grounds (§ 300, subds. (a) [abuse], (b) [neglect] & (i) [cruelty]). It also removed them from parental custody (§ 361, subd. (c)(1)) and denied the parents reunification services. In father's case, the court denied him services pursuant to section 361.5, subdivision (b)(13) [parent's history of extensive, abusive and chronic use of drugs and resistance to prior court-ordered treatment].

Father alleges the court's decision was not fair to the children. He claims they are attached to him and should be with him. He also states that "everything has been hearsay" and "no factual events are being investigated." Father's petition is inadequate because he fails to raise specific issues and substantively address them by citation to the record or to the law. (§ 366.26, subd. (l).) In any event, if we were to construe father's claims as challenges to hearsay evidence in the record and the juvenile court's decision to remove the children from his custody, we nevertheless would conclude those claims are meritless. We dismiss the petition as inadequate.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

PROCEDURAL AND FACTUAL HISTORY

The parents have a history of methamphetamine abuse that negatively affects their ability to provide ongoing care and support for the children. As a result, they first lost custody of Shawn in 2012 when he was a year old. With court-ordered treatment services, including inpatient substance abuse treatment in 2013, the parents eventually reunified with Shawn. However, after dependency jurisdiction was terminated in early 2014, the parents resumed using methamphetamine.

On October 1, 2014, father dropped mother and seven-month-old David off at an inpatient drug treatment program called WestCare for mother to “detox” from methamphetamine. Father admitted, had he tested that day, he would have been positive for both methamphetamine and marijuana. Both parents claimed mother had to take David with her in order to enter WestCare. In fact, there was an option to enter WestCare without a child.

On the day mother entered WestCare, she seemed very tired and somewhat frustrated with David and was not capable of caring for him. David meanwhile seemed fussy and cried at times.

Later in the day, a resident observed mother shake David two times in a back and forth motion. The infant’s head and neck whiplashed back and forth the first time. The resident also heard mother say to David “shut the fuck up, stop crying.” The resident went to get a staff member. Upon the resident’s return with a staff member, they observed a large bite mark on David’s upper left arm. The staff member also saw scratches on David’s chest and stomach area. Mother appeared somewhat lethargic and very tired.

When questioned by police as to how David acquired the bite mark and scratches, mother was somewhat unresponsive and confused. She stated she did not know and then asked “did I do that?” adding “I don’t know if I did that.”

David was taken to a local hospital and examined. There it was determined that David had an adult size “bite” mark about four centimeters in diameter with well-defined indentations of the lower and upper teeth and bruising. He was also found to have a four centimeter healing linear scar on his abdomen, an old bruise on the inner right arm, an abrasion to his posterior left calf and rash markings on his lower left abdomen and upper left thigh with no rash in the area covered by his diaper.

As a result, David, and later Shawn, were placed in protective custody and the Fresno County Department of Social Services (department) initiated the underlying proceedings. Mother later indicated to the children’s relative care provider that she (mother) bit David and that it was to discipline him. After the children were detained, the parents made little or no effort to treat their substance abuse issues. The department was concerned that the parents failed to make the necessary changes in lifestyle and behavior to remain clean and sober and to protect the children.

At a contested jurisdictional/dispositional hearing, father testified, denying the mother’s and his ongoing substance abuse. Relevant to his claim in this writ proceeding, father stated that since the children were detained, their visits together were good. At each visit, Shawn would grasp onto father and did not want to release him. Father also believed it was in the children’s best interest to go back home with him. However, he did not explain why.

By contrast, the department reported the strength of the parent-child relationship was not clear. The children appeared to do well at visits and Shawn in particular did not want to leave the parents. The parents played with the children but struggled with discipline.

Shawn and his younger brother were placed with a paternal aunt. Shawn had some trouble adjusting to not living with the parents but he adjusted. Shawn was able to speak but could not give a clear statement as to his wishes.

After the matter was submitted, the juvenile court remarked that it found father lacked credibility on the most crucial issues. It also found some time had passed since David's injuries and mother, in particular, made essentially no effort to avail herself of community resources so that the children could be safely returned to her care.

According to the court, it appeared Shawn would like to be back with father and that he would like to be home. However, given that Shawn was age four, the court would expect that. This did not mean, however, "that is what is safe for him." Further, the court could not find by a preponderance of the evidence, let alone by clear and convincing evidence, as required by law, that reunification would in the best interest of the children.

DISCUSSION

The purpose of writ proceedings such as this is to facilitate review of a juvenile court's order setting a section 366.26 hearing to select and implement a permanent plan for a dependent child. (Cal. Rules of Court, rule 8.450(a).) A court's decision is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is up to a petitioner to raise specific issues and substantively address them. (§ 366.26, subd. (l).) This court will not independently review the record for possible error. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Here, father's petition is inadequate because he fails to raise specific issues and substantively address them by citation to the record or to the law.

He alleges the court's decision was not fair to the children. He claims they are attached to him and should be with him. To the extent father means to argue against the children's out-of-home placement, he ignores the record before us.

As summarized above, he and the mother had unresolved and serious substance abuse issues that made them unable to care for their young children. The parents also showed no inclination to effectively address their problems. As a consequence, there was a substantial danger to the children's physical health, safety, protection or physical or emotional well-being if the children were returned home and there were no reasonable

means by which their physical health could be protected without removing them from their parents' physical custody. (§ 361, subd. (c)(1).)

Father also states that "everything has been hearsay" and "no factual events are being investigated." He offers no detail or explanation for his claims. If he means to belatedly attack the department's reports or reliance on the police department's investigation containing hearsay, he ignores section 355 which outlines the admissibility of a department's social study report even though it contains hearsay evidence. He further ignores the fact that he did not object on hearsay grounds to any of the evidence and therefore has forfeited any hearsay complaint in this writ proceeding. (Evid. Code, § 353.)

DISPOSITION

The petition for extraordinary writ is dismissed as inadequate. This opinion is immediately final as to this court.